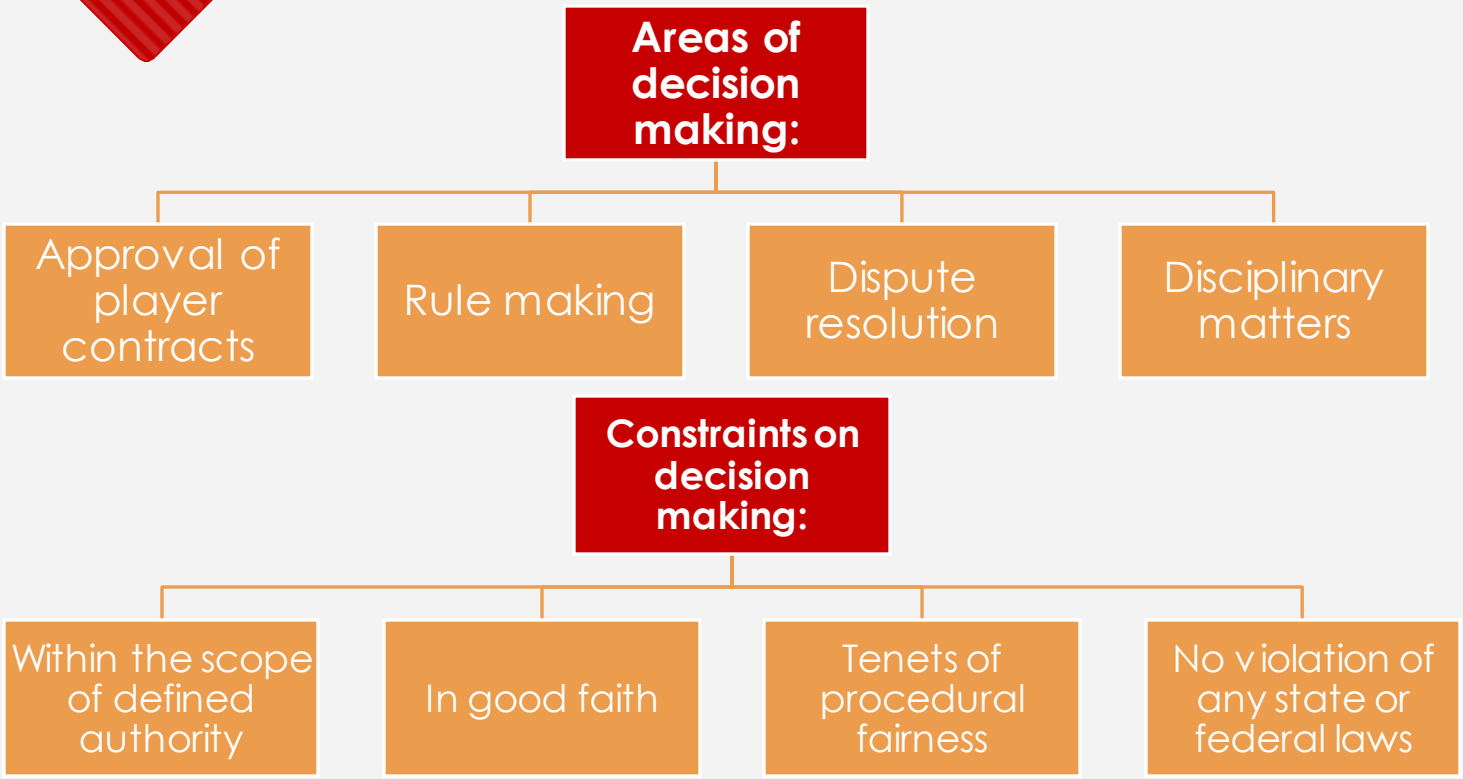
Governance Issues in Professional Sport

Chapter 10

Management Context	*Major Legal Issues*	*Relevant Laws*	*Illustrative Cases*
Sport league governance	Commissioner power	Private associations; labor law; tortious interference with contract	*Finley, Chicago National League, Brady I, Brady II, FanExpo LLC v. NFL*
	League structures	Sherman Act	*Fraser, Brown, American Needle*
	Franchise applications	Sherman Act	*Mid-South Grizzlies*
	Cross-ownership	Sherman Act	*NASL v. NFL*
	Ownership transfer	Sherman Act	*Piazza*
	Franchise relocation	Sherman Act	*Raiders I, City of San Jose v. Office of the Commissioner of Baseball, City of Oakland v. The Oakland Raiders*
	Rival leagues	Sherman Act	*NASL v. NFL, Philadelphia World Hockey, USFL v. NFL, AFL v. NFL, Hecht*
	Equipment regulation	Sherman Act; negligence	*Schutt, In Re National Football Players' Concussion Injury Litigation*
Individual sport tour governance	Event control	Sherman Act	*Volvo, JamSports, PGA Tour v. Martin*
	Equipment regulation	Sherman Act	*Gunter Harz, Weight-Rite, Gilder*
	Disciplinary authority	Sherman Act	*Blalock, Hipperdinger*

Management Contexts, Relevant Laws, and Cases

Power of the Commissioner



Courts will not interfere with a commissioner's authority to act in the best interests of the game, as long as his actions fall within the constraints of a league's constitution and by-laws, collective bargaining agreements, and due process.

Overview of Antitrust Law/ Sherman Antitrust Act

Section 1:

- Prohibits concerted action restraining trade in a relevant market.

Section 2:

- Prohibits predatory or exclusionary conduct enabling an organization to acquire or maintain monopoly power in a relevant market.

Professional sports challenge the traditional application of antitrust law to businesses.

Economic Competitive-ness and Professional Sports

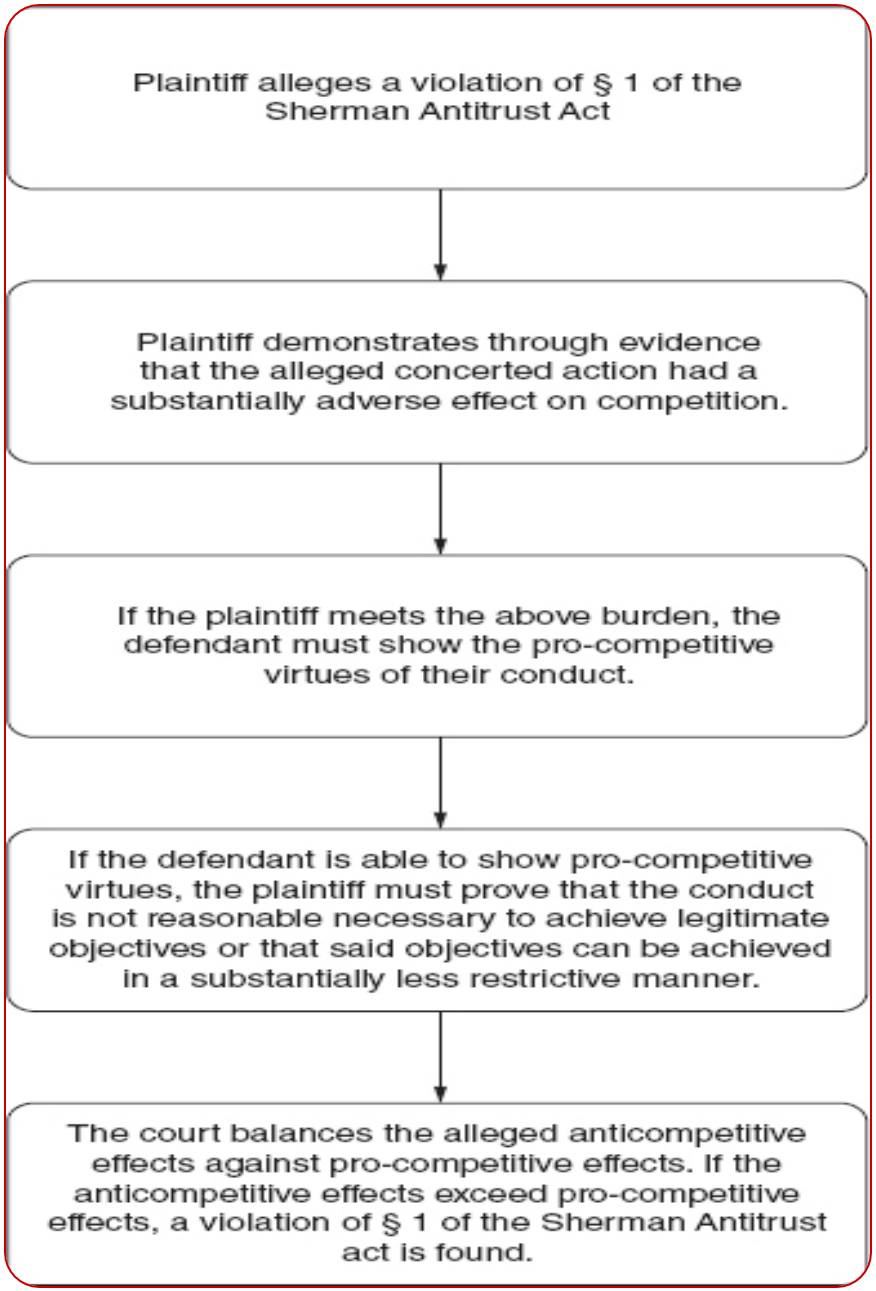
Sport teams/leagues:

Don't compete too strongly economically with one another

Competitive balance—allows for uncertain outcomes

Maximize the entertainment value

Rule of Reason Analysis


Plaintiff alleges a violation of § 1 of the Sherman Antitrust Act
Plaintiff demonstrates through evidence that the alleged concerted action had a substantially adverse effect on competition.
If the plaintiff meets the above burden, the defendant must show the pro-competitive virtues of their conduct.
If the defendant is able to show pro-competitive virtues, the plaintiff must prove that the conduct is not reasonable necessary to achieve legitimate objectives or that said objectives can be achieved in a substantially less restrictive manner.
The court balances the alleged anticompetitive effects against pro-competitive effects. If the anticompetitive effects exceed pro-competitive effects, a violation of § 1 of the Sherman Antitrust act is found.

Overview of Governance and Structure

Professional sport leagues:

- The commissioner
- Board of governors or owners committee
- Centralized league office

Professional individual sports

- Players' associations

Structures of Pro Sport Leagues

Traditional structure:

- An association of clubs, each with separate and independent ownership

Single entity structure:

- Major League Soccer, Arena Football League; formerly the Women's National Basketball Association; Women's United Soccer League

Division of Responsibilities in a Traditional League Structure

League office conducts centralized league operations such as:

- Scheduling games
- Hiring and training officials
- Disciplining players
- Marketing and licensing logoed merchandise
- Negotiating broadcasting contracts

League board of directors or owners committee oversees policy making on issues such as:

- Franchise relocation
- League expansion or contraction
- Playing facility issues
- Collective bargaining
- Rules of play
- Revenue sharing of non-locally generated revenue

Individual teams have responsibility for matters such as:

- Facility acquisition or leasing
- Team marketing
- Ticket sales and luxury seating
- Arrangements for local broadcasting contracts

Legal Issues and League Governance

Applications for Sport Franchises (could be considered concerted action)

League Wide Business Contracts

- Exclusive Sponsorship Agreements
- Legalized Sports Gambling

Team Ownership

Leagues have rules that set eligibility standards for acceptable owners.

Concerns:

Cross-ownership	Transfer of ownership

Legal Review

- In your opinion, what should be the ramifications to the owner of a team who has made racist remarks about players and fans?
- What action, if any, should the league's commissioner take?

Franchise Relocation

Restrictions:

- Sites must have sufficient characteristics to maintain league stability.
- Relocation must not negatively affect team travel and scheduling.
- New territory does not encroach on existing territorial rights.
- Relocation does not reduce geographic diversity.
- Relocation honors contractual and ethical duties.

Thwarting Rival Leagues

- Use cross-ownership rules to limit initial investment capital
- Restricting the supply of players
- Limiting media exposure
- Limiting the availability of playing sites

Competitive Advantage Strategies Working within Antitrust Law

01

Ask an attorney to help define the relevant market.

02

Seek help in weighing anticompetitive vs. procompetitive effects of rules on economic competitiveness.

03

Try to predict how a court would decide your case if the rule were challenged under antitrust laws.

Structure of Professional Individual Sports

Organization differs from structure of professional team sports.

Athletes in individual sports:

- Not employees
- Not subject to employment discrimination, labor laws, or antitrust laws

Organizational Structure

Individual sports:
Events or tours
Governed by players' associations (active players) and other stakeholders
Individual sport athletes:
Don't earn a salary; instead, win prize money
Examples: Professional Golfers' Association Tour; Women's Tennis Association

Who Controls Events?

- With an individual event, the owner/ producer/promoter is entitled to all of the revenue.
- When an event is part of an organized tour:
  - Promoter may have to surrender some control/ revenue-generating processes to players' association or tour
  - Players' association may officially sanction some events and not others

Regulation of Equipment and Dress Codes

Do exclusive contracts with an equipment company constitute a monopoly?

Do rules prohibiting certain equipment constitute unreasonable restraint of trade?

What technological developments are acceptable, and what technological changes alter the game too much?

Do the dress codes treat men and women differently?

Legal Review

- How do you feel about technological changes to equipment and thus to a sport?
- Can you think of examples of changes that have changed a sport for the better? For the worse?
- Should women be required to wear skimpy outfits for competition? What is the rationale for such requirements?

Disciplinary Authority

- Because active athletes serve on players' associations:
  - They are influential in shaping governance policies.
  - They are in a position to make disciplinary decisions that affect their fellow competitors.

Competitive Advantage Strategies
Governance of Professional Individual Sports

Consider	Exercise	Identify	Ask	Find
Consider a variety of potential legal challenges when making decisions about rules to control your event.	Exercise foresight in decision making.	Identify strong, legitimate policy reasons to support regulation of specific equipment.	Ask your lawyer for opinions on how antitrust law might apply to your sport's activities.	Find a way to avoid having active athletes subjectively impose sanctions on fellow competitors.

Legal Review

- If you were to become a professional athlete (and you had the needed skills for any sport), would you prefer to be involved with a team sport, such as basketball, or with an individual sport, such as tennis? Why?